



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 25, 2009

Barry McHugh
Kootenai County Prosecutor
Box-9000
Coeur d'Alene, ID 83814

Re: Investigation relating to Chairman of Lake City Development Corporation.

Dear Barry:

In March of 2008, Kootenai County Prosecutor William Douglas requested that the Office of Attorney General investigate and review for potential criminal prosecution certain allegations of a conflict of interest regarding Lake City Development Corporation (LCDC) chairman Charles Nipp. There were several other issues circulating in the community at that time surrounding the operations of the LCDC, but the scope of the investigation accepted by this office was limited exclusively to the potential of a criminal law violation as a result of Mr. Nipp's involvement on both the board of LCDC and his employment with Mountain West Bank. Our investigation has now been completed and I am writing to advise you that we are declining to file any criminal charges in this matter.

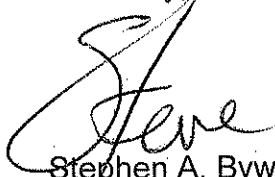
Conflicts of interest against public officials are addressed in Idaho Code §18-1359 and Idaho Code §59-201. Violations of these code sections are misdemeanors under Idaho law. We received the case on March 24, 2008, and the last loan that is the subject of the allegations of a conflict of interest occurred on February 24, 2006. Under Idaho Code §19-403 all misdemeanors must be prosecuted within a year of the offense, and as such, the statute of limitations has run on any criminal liability resulting from these allegations. Despite the expiration of the statute of limitations in this case, our office investigated this matter to ensure that the allegations were fully reviewed and that the conduct of this public official was made a matter of public knowledge.

Our investigation revealed that Mr. Nipp's conduct, while constituting a technical violation of the aforementioned statutes, does not rise to the level of a prosecutable crime. Although Mr. Nipp failed to disclose his potential conflict of interest, our investigation revealed that Mr. Nipp's compensation from his employer Mountain West Bank is fixed and does not vary depending on loans the bank makes. Further as a board member of the bank, Mr. Nipp has no involvement with the approval/disapproval process for any loan less than 1.5 Million dollars. All of the disputed loans in this investigation were well under that amount, and were competitively bid prior to being awarded to Mountain West Bank. In our investigation we did not find any personal pecuniary benefit that Mr. Nipp obtained from the awarding of loans to Mountain West Bank by LCDC.

In addition, our investigation further revealed that on one occasion when Mr. Nipp believed he had a conflict of interest on an unrelated matter, he disclosed the conflict--despite advice from an attorney that no conflict existed--and did not vote on the matter. It appeared clear to us that his failure to disclose his potential conflict of interest in the instances involved in the allegations we were investigating was not done with the intent to defraud or deceive LCDC, but rather were the result of his belief that he did not have a conflict. Although this belief was in error, we do not believe that Mr. Nipp acted with criminal intent. As such, we believe that criminal charges would not have been appropriate given the facts of this case and that filing such charges would not have served the interests of justice irrespective of the statute of limitations issues.

If you have any questions about our decision in this case or the investigation, please feel free to contact me

Sincerely,

A handwritten signature in black ink, appearing to read "Steve", with a stylized flourish extending from the end.

Stephen A. Bywater
Deputy Attorney General
Chief, Criminal Law Division

SAB/fn



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Charles Nipp, Chairman;
Lake City Development Corporation;
Conflict of Interest
2008-016

Assigned to: Jim Kouril, Investigator
Criminal Investigation Unit, Criminal Law Division

Date Assigned: March 31, 2008

Report by: Jim Kouril 

Date of Report: September 3, 2008

SYNOPSIS:

Captioned investigation is predicated upon a March 24, 2008, agreement between William J. Douglas, Kootenai County Prosecutor and Stephen A. Bywater, Division Chief, Criminal Law Division, requesting an investigation into allegations of a potential conflict of interest on the part of Charles Nipp while fulfilling his roles as Chairman of the Lake City Development Corporation and as a Director of a Mountain West Bank for any criminal violations.

DETAILS:

Lake City Development Corporation (LCDC) is an urban renewal agency established by the City of Coeur d'Alene's City Council under the authority granted to cities in the Idaho Urban Renewal Law of 1965. As an urban renewal agency, LCDC is created in the municipality of Coeur d'Alene as an independent public body corporate

and politic. The LCDC consists of an eight member board of commissioners of which Charles Nipp is the Chairman and Tony Berns is the Executive Director.

A public records search of Nipp was conducted and that search identified him as a member of the Board of Directors for Mountain West Bank, whose holding company is Glacier Bankcorp.

On May 12, 2008, a request for public records was sent to Tony Berns, LCDC Executive Director. On May 28, 2008, Tony Berns was interviewed by an Investigator from the Office of Attorney General and he provided LCDC Board Meeting Minutes from January 2003 – December 2006, list of membership from 2003-2006 and property acquisition documents from 2003-2006. During the interview Berns reported that LCDC acquired thirteen properties from 2003-2006. He stated that he sends out bids to the local banks for financing information. The response from the banks is then presented to the LCDC Board of Directors for a vote on which bank will finance the project.

The documents provided by Berns were reviewed by an Investigator from the Office of Attorney General. From 2003-2006 there were thirteen properties acquired by LCDC and six of those properties were financed by Mountain West Bank. The financing for each of these properties was bid on by at least three different banks. The properties acquired by LCDC are described below:

Property	Acquired	Price	Financing	BIDDS
622 Lincoln Wy	1/10/2003	69,000	Unk	MW, WT
308 CDA Ave	5/1/2003	218,000	Owner	
618 Lincoln Wy	6/1/2003	83,000	Unk	MW, II, Inland NW, BC
612 Lincoln Wy *	8/7/2003	83,500	MW	MW, Inland NW, WT, BC
626 Lincoln Wy *	10/28/2003	105,000	MW	MW, Inland NW, WT
515 W Garden Ave	5/21/2004	340,000	WT	MW, Inland NW, WT
632 Lincoln Wy *	1/5/2005	120,000	MW	MW, Inland NW, WT, BC
604 Lincoln Wy *	3/28/2005	170,000	MW	MW, Inland NW, WT, BC
211 N 4th St *	4/1/2005	275,000	MW	MW, Inland NW, WT
608 Lincon Wy	7/18/2005	220,000	WT	MW, Inland NW, WT, BC
712 E Young Ave	10/14/2005	415,000	Inland NW	MW, Inland NW, WT

813-817 N 4th St *	2/24/2006	292,500	MW	MW, Inland NW, WT
301 E. Lakeside Ave	4/25/2006	625,000	Inland NW	MW, Inland NW, WT, BC

* Financing provided by Mountain West Bank

Bank Codes

MW Mountain West

Inland NW

WT Washington Trust

BC Bank Couer d Alane

II Idaho Independent

On August 20, 2008, Charles Nipp was interviewed by an Attorney General Investigator and reported that he is the commission Chairman for the LCDC and has held that role since 1997. He stated the role of the commissioners is to seek out ways to promote economic growth within the Urban Renewal District and the commissioners are appointed by the Mayor of Coeur d' Alene and approved by the City Council. Nipp stated that he also serves on the board of directors for Mountain West Bank and has held a position on that board since 1992. He reported that Mountain West Bank is a subsidiary of Glacier Bank Corporation, a publicly traded company. Nipp advised that his compensation for sitting on the board of Mountain West Bank is about \$900.00 a month and he is not compensated for sitting on the LCDC board.

Nipp stated that he also sits on the finance board for LCDC. He stated that when the LCDC identifies property to purchase, Tony Berns sends an email to different banks requesting their financing packages for the property to be purchased. Once the responses from the banks are received, the finance committee reviews the bids and makes a recommendation to the entire LCDC board. Nipp stated that the LCDC board has always unanimously voted to approve the finance committee's recommendation.

Nipp was asked by an Attorney General Investigator if each time or anytime the finance committee recommended to the LCDC board that Mountain West Bank finance a project, if he declared, in an open public meeting prior to voting, that he sits on the

board of directors for Mountain West Bank. Nipp stated that he has not announced he sits on the board for Mountain West Bank. He stated that everyone knows he sits on the board that it is public knowledge and the local newspaper even printed a story stating he sits on the Board of Directors for Mountain West Bank. He stated that he did not believe there was a conflict of interest because he does not approve loans for Mountain West Bank and has no contact with the loan department. Nipp also reported that LCDC discussed acquiring some property that he owned and he declared that he had a conflict of interest and did not participate in those discussions even though the City of Coeur d' Alene Attorney told him there was not a conflict.

FINDINGS:

During the time period between 2003 and 2006, LCDC took out six loans from Mountain West Bank to purchase properties as part of an urban renewal plan. Nipp voted in favor of taking out the loans and failed to disclose he sits on the board of directors for Mountain West Bank.

EVIDENCE DATA:

Digital Recording of August 20, 2008 interview of Nipp
LCDC meeting minutes

SUBJECT DATA:

Charles R. Nipp [REDACTED]

2007-2008 LCDC Meeting Minutes [REDACTED] 2007-2008 LCDC Meeting Minutes [REDACTED]

Anthony (Tony) Berns [REDACTED]

[REDACTED]